

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

FIRST SHIP, LLC, FRANCIS A. MARTIN, III, TAX)	
MATTERS PARTNER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 20419-15.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	
)	
)	

ORDER

On August 14, 2015, petitioner filed a timely petition seeking readjustment of First Ship, LLC's partnership items relating to 2000. On October 16, 2015, respondent filed an answer in which he made affirmative allegations in response to petitioner's claim that the period of limitations has expired. Some of respondent's pleading in his answer represent legal assertions and conclusions rather than factual allegations. Petitioner did not file a reply to the answer. On January 14, 2016, respondent filed a motion for entry of order that undenied allegations be deemed admitted pursuant to Rule 37(c).¹ On January 27, 2016, petitioner filed a response to respondent's motion for entry of order that undenied allegations be deemed admitted pursuant to Rule 37(c).

Petitioner asserts that no reply is required under Rule 37 because: (1) respondent has not identified any issue on which respondent has the burden of proof (noting in particular respondent's answer to petitioner's affirmative defense of the statute of limitations); (2) respondent's answer includes allegations and conclusions of law to which no response is required; and (3) respondent's answer contains facts that were conclusively established in proceedings before the Northern District of California and can be readily stipulated to in this case.

On March 7, 2016, respondent filed a response to petitioner's response. Respondent asserts that he has the burden of going forward to establish an exception to the general three-year period of limitations. Rule 37(b) refers to material allegations "on which the Commissioner has the burden of proof." We note that when a party pleading the affirmative defense of the statute

¹All Rule references are to the Tax Court Rules of Practice and Procedure.

of limitations has established a prima facie case, the burden of going forward with the evidence shifts to the other side. Adler v. Commissioner, 85 T.C. 535, 540 (1985). However, the Court has held that the burden of proof does not shift from the party who pleads the bar of the statute of limitations. Id. Given that the parties appear to agree that respondent does not have the burden of proof with respect to any allegations made in the answer it would appear to the Court that no reply is required pursuant to Rule 37.

It is noted that the parties have spent some amount of time parsing words on matters that they may already agree upon. The Court expects the parties to move forward keeping in mind the provisions requiring the parties to informally consult and communicate (Rule 70(a)) and fully stipulate facts which fairly should not be in dispute (Rule 91).

Premises considered, it is

ORDERED that respondent's Motion For Entry of Order That Undenied Allegations Be Deemed Admitted Pursuant to Rule 37(c), filed January 14, 2016, is denied.

(Signed) Peter J. Panuthos
Special Trial Judge

Dated: Washington, D.C.
March 11, 2016